

No. 13939

---

United States  
Court of Appeals  
for the Ninth Circuit

---

WILLIAM JOY BATELAAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

DEC 2 1952



No. 13939

---

United States  
Court of Appeals  
for the Ninth Circuit

---

WILLIAM JOY BATELAAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Adoption of Designation.....	34
Certificate of Clerk.....	30
Designation of Record.....	7
Indictment .....	3
Judgment and Commitment.....	4
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	6
Reporter's Transcript of Proceedings.....	8
Witness, Defendant's:	
Batelaan, William Joy	
—direct .....	13
—cross .....	16
Statement of Points on Which Appellant Intends to Rely on Appeal.....	32



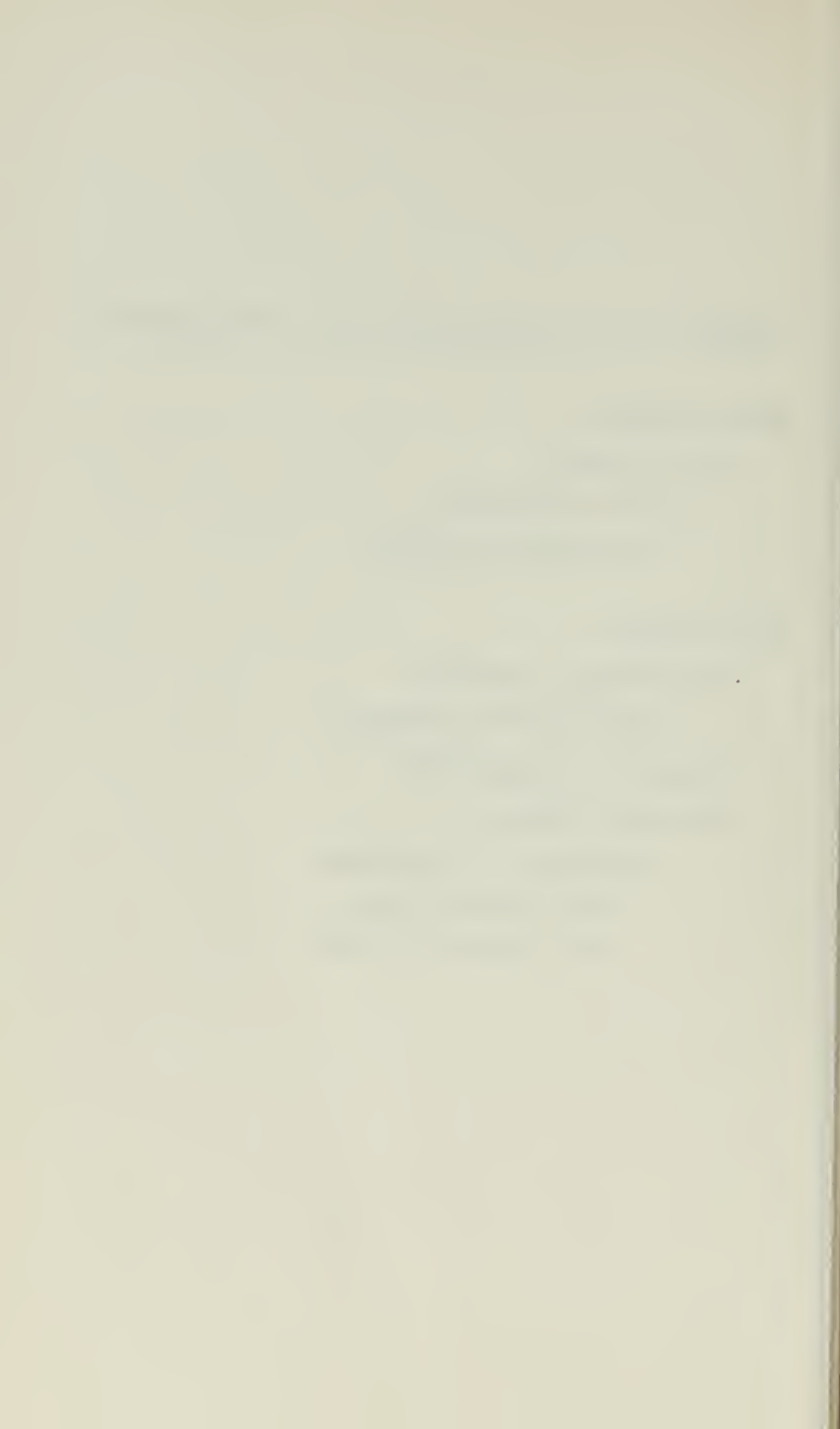
## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

J. B. TIETZ,  
257 S. Spring St.,  
Los Angeles 12, Calif.

For Appellee:

WALTER S. BINNS,  
United States Attorney,  
MARK P. ROBINSON,  
MANUEL REAL,  
Assistants U. S. Attorney,  
600 Federal Bldg.,  
Los Angeles 12, Calif.





In the United States District Court in and for the  
Southern District of California, Central Division

No. 22574 CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM JOY BATELAAN,

Defendant.

INDICTMENT

[U.S.C., Title 50, App., Sec. 462—Universal Military Training and Service Act]

The grand jury charges:

Defendant William Joy Batelaan, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 83, said board being then and there duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said act and the regulations promulgated thereunder, the defendant was classified in Class I-A and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed forces of the United States of America on October 13, 1952, in Los Angeles County, California, in the

division and district aforesaid; and at said time and place the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do.

A True Bill.

/s/ LAWRENCE L. ROGERS,  
Foreman.

/s/ WALTER S. BINNS,  
United States Attorney.

ADM:AH

[Endorsed]: Filed November 19, 1952. [2\*]

---

United States District Court for the Southern  
District of California, Central Division  
No. 22574-Cr.

UNITED STATES OF AMERICA,

vs.

WILLIAM JOY BATELAAN.

### JUDGMENT AND COMMITMENT

On this 7th day of April, 1953, came the attorney for the government and the defendant appeared in person and with his attorney, J. B. Tietz, Esquire.

---

\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of having on October 13, 1952, in Los Angeles County, California, knowingly failed and neglected to perform a duty required of him under the Universal Military Training and Service Act and the regulations promulgated thereunder in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do, as charged in the Indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four years in an institution to be selected by the Attorney General of the United States or his authorized representative for the offense charged in the indictment.

It Is Adjudged that execution be stayed until 4 p.m. on Thursday, April 9, 1953, and that the bail of the defendant be exonerated upon surrender of the defendant to the United States Marshal at or prior to 4 p.m. on April 9, 1953.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and

that the copy serve as the commitment of the defendant.

/s/ WM. C. MATHES,  
United States District Judge.

EDMUND L. SMITH,  
Clerk

By /s/ P. D. HOOSER,  
Deputy Clerk.

[Endorsed]: Filed April 7, 1953. [7]

---

[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Appellant, William Joy Batelaan, resides at 12583 Adelpia Street, San Fernando, California.

Appellant's attorney, J. B. Tietz, maintains his office at 534 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to submit to induction, U.S.C., Title 50 App., Sec. 462—Selective Service Act, 1948.

On April 7, 1953, after a verdict of Guilty the court sentenced the appellant to four years confinement in an institution to be selected by the Attorney General.

I, J. B. Tietz, appellant's attorney being authorized by him to perfect an appeal do hereby appeal

to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

/s/ J. B. TIETZ,  
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 7, 1953. [8]

---

[Title of District Court and Cause.]

### DESIGNATION OF RECORD

The following are hereby designated as the record which is material to the proper consideration of the Appeal filed by William Joy Batelaan in the above-entitled cause.

1. Indictment.
2. Reporter's Transcript (as requested of Reporter).
3. All Exhibits in evidence or proffered are to be transmitted to the Court of Appeals as provided by Rule 75 (O) R.C.P. and Rule 11 of the U.S.C.A. for the Ninth Circuit.
4. Notice of Appeal.
5. Designation of Record.
6. All Stipulations.

/s/ J. B. TIETZ,  
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 29, 1953. [10]

In the United States District Court, Southern  
District of California, Central Division

No. 22574-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM JOY BATELAAN,

Defendant.

Honorable William C. Mathes, Judge Presiding.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Appearances:

For the Plaintiff:

WALTER S. BINNS,

United States Attorney, By

MARK P. ROBINSON,

Asst. U. S. Attorney.

For the Defendant:

J. B. TIETZ, ESQ.

Thursday, March 26, 1953, 1:30 P.M.

The Court: No. 22574, United States vs. William Joy Batelaan. Is it stipulated the defendant is present, gentlemen?

Mr. Tietz: Yes, your Honor.

Mr. Robinson: So stipulated.

The Court: I notice there is in the file a waiver of trial by jury and a waiver of special findings of

fact which was approved and filed January 5 last. I assume the defendant desires to proceed without a jury.

Mr. Tietz: Yes, your Honor.

The Court: Very well.

Mr. Robinson: Your Honor, I noticed in the Batelaan exhibit folder there is already marked for identification a photostatic copy of the Selective Service file which is marked Government's Exhibit 1 for identification and a stipulation signed by the defendant and the Government and the defendant's counsel which is now marked Government's Exhibit 1-A for identification. The Government now offers each of those exhibits in evidence and asks that they be marked as they are now marked in evidence.

The Court: Is there objection?

Mr. Tietz: None.

The Court: Received into evidence. The Selective Service file is Exhibit 1 and the stipulation is Exhibit 1-A [3\*] in evidence.

The Clerk: Government's Exhibit 1 in evidence and Government's Exhibit 1-A in evidence.

Mr. Robinson: The Government rests, your Honor.

Mr. Tietz: The defendant desires to make a motion for judgment of acquittal and has several points that he wishes to urge upon the court.

May counsel have one of the two copies of the file to make certain of the pagination? May I have the one the clerk had and the court can follow me on the original?

---

\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: I have a photostatic copy, which is Exhibit 1 for identification. Do you have another, Mr. Clerk?

Mr. Tietz: Is that the one of Batelaan?

The Clerk: This is the Johnson.

The Court: You may have the file, Mr. Tietz. Mr. Clerk, will you hand counsel Exhibit 1?

Mr. Tietz: I will use Mr. Robinson's and the court can follow better with the exhibit.

The Court: Very well.

Mr. Tietz: There are just two or three documents that I wish to take another glance at.

Mr. Robinson: With the court's permission, I am going to stand up here and watch.

The Court: You may.

Mr. Tietz: I wish to verify what my notes showed, your [4] Honor. The first point is—

The Court: Before you proceed, I notice that the stipulation is not dated, is not signed by counsel or the defendant. It apparently was handed to the clerk and intended to be later signed. I notice that after the court has endorsed an approval on the stipulation.

Mr. Robinson: I am sorry.

The Court: Will you date and sign it and permit the defendant to sign it?

Mr. Tietz: The first point, your Honor, is that the exhibit shows a fatal procedural defect, page 38. That is the crucial order in the whole Selective Service System.

The Court: 38 in Exhibit 1?



Mr. Tietz: Yes, sir. This page is 38, entitled "Order to Report for Induction."

The Court: You mean it appears to be signed by the clerk?

Mr. Tietz: Well, not even that; something called "Asst. Co-ordinator." Even the "Clerk" is scratched out.

My argument on it is this:

(Argument omitted from transcript upon request of counsel.)

The Court: We will take the afternoon recess at this time of five minutes.

(Short recess.) [5]

The Court: In No. 22574, *United States vs. Batelaan*, is it stipulated, gentlemen, the defendant is present?

Mr. Tietz: Yes, sir.

Mr. Robinson: So stipulated, your Honor.

The Court: Anything further on the motion for judgment of acquittal?

Mr. Robinson: Yes, your Honor. I would like to state something in response to Mr. Tietz's argument.

(Continued argument of counsel omitted from transcript by request of counsel.)

The Court: Is there any other ground on the motion for judgment of acquittal?

Mr. Tietz: Yes, sir. The defendant has other points that I would like to present. It will be observed from page 39 of the exhibit (Government's

1) that this defendant conveyed to the Local Board by doctor's certificate the fact that he had a pregnant wife. Under the regulations, a registrant who has a pregnant wife is entitled to be considered as one who has a child.

Now, I will be quick to concede that there is a deadline imposed by that very regulation that states or says that if the doctor's certificate comes in after the order to report for induction, as it did here a few days later, that it shall not be counted. So that the point I am making is this: That that regulation is unfair and the court should so hold; [6] that the intent of Congress was that fathers should be kept at home supporting the families and not put into the service.

(Argument omitted by request of counsel.)

Now, I have some other points that I would like to have the court consider. One I will make merely for the record because I know your Honor's attitude on it, and that is that this man was obviously classified when a quorum was not present. The classification act and the minutes of action show that. I won't go further than that because I know that your Honor has not considered that a meritorious point in the past.

Then the defendant submits to your Honor that the action of classifying him was arbitrary in that his evidence was for that of a conscientious objector. The hearing officer himself, just as in the preceding case, your Honor, made a I-A-O recommendation, but that consideration was not given by the Attor-

ney General nor by the appeal board itself. So that I say that that is an arbitrary action contrary to the evidence.

The next point is that the Attorney General has a mistaken concept of the law. He says that, because this individual believes in force, therefore he is within the prescribed class that does not have scruples against war. I have argued that to your Honor before so I won't go further on that.

Then, of course, the Nugent point, that the FBI report should be in the file. And then—well, that comprises the [7] points I wish to make at this time.

The Court: The motion for judgment of acquittal will be denied.

Mr. Tietz: The defendant will take the stand.

### Defendant's Case in Chief

#### WILLIAM JOY BATELAAN

the defendant herein, called as a witness in his own behalf, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: William Joy Batelaan.

The Court: Do you pronounce your name Batelaan?

The Witness: Batelaan.

### Direct Examination

By Mr. Tietz:

Q. Mr. Batelaan, I am going to place before you Government's Exhibit 1 and ask you to look at page 24.

(Testimony of William Joy Batelaan.)

Has the clerk the exhibit that can be placed before the witness? The court has the other one?

The Court: The clerk will place Exhibit 1 before the witness.

Q. (By Mr. Tietz): You are reading the summary of your personal appearance hearing before the Local Board, are you not, Mr. Batelaan?

A. It looks like it.

Q. Have you finished reading your summary?

A. Not yet. Yes, sir.

Q. At that hearing did one of the board members say anything to you about his son being in the army?

A. That is correct.

Q. What was that statement?

A. He told me that he had a son in the army and he didn't see why I couldn't be in the army, too.

Q. Did you attempt to bring them in new evidence or further evidence?

A. Yes, I did. I brought my brother-in-law down to the Local Board that day and had my brother-in-law converse with them.

Q. What was he supposed to do?

Mr. Robinson: Your Honor, I object to that question as to what he was supposed to do.

Q. (By Mr. Tietz): What was he prepared to do?

The Court: That means for what purpose did he bring him?

Mr. Tietz: Yes, that is it.

A. I brought my brother down there as suffi-

(Testimony of William Joy Batelaan.)

cient evidence to have him go in to the Local Board with me and help me quote Scriptures from the Bible to the Local Board, and to further prove that I was a conscientious objector, since he was a minister.

Q. Why was he able to do this better than you or to [9] aid you in this?

Mr. Robinson: I object to that as calling for a conclusion of this witness.

The Court: Do you mean why did the witness consider him better able to?

Mr. Tietz: Yes, sir.

The Court: Overruled.

Q. (By Mr. Tietz): Does he have some official position in your Company, or does he have some special learning or some special knowledge about you?

A. Well, he has been my brother-in-law ever since 1947. I figured that he would have a better understanding of my position than anybody that I knew.

Q. What happened when you brought him there?

A. He was refused to enter into the Local Board with me.

Q. Did you tell them why you brought him there? A. I told them that.

Mr. Tietz: You may cross-examine.

(Testimony of William Joy Batelaan.)

Cross-Examination

By Mr. Robinson:

Q. Mr. Batelaan, turning to page 24 of Government's Exhibit 1, you have read it previously here in court, have you not? Have you read it, Mr. Batelaan? A. Yes. [10]

Q. Is there any information which you presented to the Local Board on the hearing, the personal appearance held September 18, 1951, which does not appear in some form in this summary on page 24? A. Yes.

Q. Would you tell the court what that information was?

A. That information was when he stated that his son was in the army and he didn't see why I shouldn't be in the army.

Mr. Robinson: Your Honor, I move to strike that answer as not being responsive to the question. The question I asked Mr. Batelaan was: Did you present any information to the Board on your personal appearance which does not appear in this summary?

The Court: Do you oppose the motion to strike?

Mr. Tietz: I beg pardon?

The Court: Is the motion to strike as non-responsive opposed?

Mr. Tietz: No.

The Court: Granted. Do you understand the question, Mr. Batelaan?

The Witness: I wish he would explain it.

(Testimony of William Joy Batelaan.)

The Court: I suggest you restate it.

Mr. Robinson: Yes, your Honor.

Q. Going back to your personal appearance on September [11] 18, 1951, while you were there in front of the Board did you present any information to the Board which does not appear in this summary on page 24?

A. Well, I also brought my Bible with me and I wanted to quote Scriptures to them but they refused to hear what I had to say, and that is not in my file.

Q. In other words, you did not quote the Scriptures to them, is that right?

A. No, I was not able to.

Q. Outside of this instance that you have reference to about the Bible did you tell them any other information that does not appear on page 24?

A. No.

Mr. Robinson: You did not?

The Court: Did you intend or seek to quote to the Local Board any Scriptures which are not quoted or attached to the Special Form for Conscientious Objector? Did you have other Scriptures, or are all of the scriptural references on which you relied at that time quoted in your Selective Service Questionnaire? Your answer?

The Witness: Yes, sir.

The Court: I want to be sure you understand me.

The Witness: Yes.

The Court: You know you had in your file at

(Testimony of William Joy Batelaan.)

that time your Special Form of Conscientious Objector to which you [12] attached certain pages you will see there in Exhibit 1——

Mr. Robinson: Page 17.

The Court: ——in which you quoted the Scriptures at some length. Do you see that page 17 or thereabouts in Exhibit 1?

The Witness: Yes, sir.

The Court: Now, my question, Mr. Batelaan, is whether you, at the time of your personal appearance before the Local Board, purposed or intended or attempted to cite or refer the Local Board to any Scriptural references not given in your conscientious objector form?

The Witness: Yes, I did have other Scriptures I wanted to quote to them.

The Court: What?

The Witness: Well, there is quite a few Scriptures I had in mind to quote to them. It would be kind of hard for me to say right now what they would be, but if I had a Bible, I am sure I could quote them to you now. I haven't had time to look them up. That is why I had my brother-in-law there, to help me find the Scriptures in the Bible so I wouldn't have to waste too much of the Board's time.

Q. (By Mr. Robinson): How long were you before the Local Board at your personal appearance, do you recall?      A. About 10 minutes.

Q. About 10 minutes?

A. That is right. [13]



(Testimony of William Joy Batelaan.)

Q. At the time that you attempted to read from the Bible what did you say to the Board and what, if anything, did any of the members of the Board say to you?

A. Well, I told them that I would like to cite from the Bible, and they just kept going to different questions. They didn't seem to be paying attention to what I had to say.

Q. You mean they did not specifically say "You can't read from the Bible," is that right?

A. No, they didn't say that, but they were cutting me off.

Q. They were what?

A. They were cutting me off.

Q. In other words, you said, "I would like to cite from the Bible"? A. That is right.

Q. And then they would ask some questions, is that right? A. Yes.

Q. That had nothing to do with the Bible, is that right? The question wouldn't have anything to do with the Bible?

A. Yes, the question would have something to do with the Bible.

Q. It would? A. Yes.

Q. Can you tell the court, just as best you can, what [14] the conversation was that went on between you and the Board at this time?

A. It would be kind of hard. It was at least a couple of years ago.

Q. I mean to the best of your recollection.

(Testimony of William Joy Batelaan.)

A. Well, they asked me if I worked at Lockheed—

Q. No. I mean with reference to the Bible, because you wanted to cite something from the Bible. I am trying to find out in what way they cut you off.

A. Well, they just asked me different questions such as—well, I tried to quote from the Bible and they kept—well, “Was your Mother a Jehovah’s Witness? And was your father?” and they would just cut me off. They just would keep going from one question to another.

Q. At the termination of your appearance there what was said? In other words, did you tell them you had anything more to say?

A. No. I told them I didn’t have any more to say, because they didn’t seem to be very interested in what I had to say, anyway.

Q. In other words, they did ask you if you had anything more to say, is that correct?

A. That is correct.

Q. At this time you did not cite these new sections of the Bible, is that right? [15]

A. That is right.

Q. At any time during this appearance did you specifically tell any member of the Board that you had sections that you wished to quote from the Bible which did not appear in your file already?

A. No, I didn’t.

Mr. Robinson: All right. I have no further questions.

Mr. Tietz: No redirect.

The Court: You may step down, Mr. Batelaan.

Mr. Tietz: The defense would like the FBI file of this defendant.

Mr. Robinson: Your Honor, the United States Attorney has in custody in court, under seal, the Federal Bureau of Investigation or a copy of the Federal Bureau of Investigation report on William Joy Batelaan, which report is dated on January 4, 1952. I am going to hand it to the clerk under seal and ask that it be marked Defendant's Exhibit A for identification.

The Court: Does the Attorney General claim the privilege under the order? What order?

Mr. Robinson: He does, your Honor, under Order 3229. We are prepared to enter into a stipulation concerning the file, if your Honor pleases.

The Court: Very well, the clerk will mark the envelope containing the report as Exhibit A for identification. [16]

Mr. Robinson: May it be stipulated that the exhibit which is now marked Defendant's Exhibit A for identification is a copy of report made by the Federal Bureau of Investigation concerning the conscientious objector claims of the defendant Batelaan?

Secondly, that the Defendant's Exhibit A is a true and accurate copy of the complete investigative report made by the Federal Bureau of Investigation concerning the conscientious objector claims of this defendant?

Third, that the Defendant's Exhibit A for iden-

tification, or a true copy thereof, was forwarded by the representative of the Federal Bureau of Investigation, so designated, for the purpose, to the office of the United States Attorney?

Fourth, that the defendant's Exhibit A for identification was forwarded by the office of the United States Attorney to the hearing officer designated by the Department of Justice to hear the conscientious objector claims of the defendant Batelaan, as provided in Section 6(j) of the Universal Military Training and Service Act and Selective Service Regulation 1626.25?

And fifth, that the Defendant's Exhibit A for identification is the investigative report that was in the possession of the hearing officer prior to the hearing held to determine the validity of the conscientious objector claims of the defendant Batelaan, and was used and referred to by the [17] hearing officer in the recommendation he prepared and sent to the Department of Justice concerning conscientious objector claims of the defendant Batelaan, as provided in Section 6(j) of the Universal Military Training and Service Act and Selective Service Regulation 1626.25?

And sixth, that Defendant's Exhibit A for identification is a true copy of any and all Federal Bureau of Investigation reports ever made on this defendant concerning his conscientious objector claims, or which was ever in the possession of the Federal Bureau of Investigation or the United States Attorney?

Mr. Tietz: We accept that stipulation.

The Court: Very well.

Mr. Tietz: We ask that this Exhibit A be admitted into evidence and that we be permitted to inspect it and use it in our defense.

Mr. Robinson: Your Honor, we object to the admission of Exhibit A in evidence on the grounds that there is no proper foundation laid for its entrance, and we object to the inspection of the defendant on the grounds that the Attorney General has claimed the privilege of confidential documents under the Attorney General's order 3229.

The Court: The court will make an in camera inspection of Exhibit A for identification before ruling upon the motion and offer of the defendant.

Is there any contention here that this defendant made any [18] request of the hearing officer?

Mr. Tietz: There is not.

The Court: The Government's objection that the Defendant's Exhibit A for identification is irrelevant and immaterial to any issue in this case is sustained. For that reason the document will not be received into evidence.

The motion of the defendant for inspection of the exhibit by the defendant and his counsel is denied upon the ground that, in the view of the court from an in camera examination of the document itself, the public interest in the preservation of the confidential character of such executive communication, pursuant to regulations issued under authority of Section 22 of Title 5 of the United States Code, outweighs any possible evidentiary value of the exhibit to the defendant in this case.

The clerk will seal the Defendant's Exhibit A for identification and retain it in his custody, under seal, pending further order of the court. And the court will now order that, upon application of the appellant in any appeal that may be taken in this case, Defendant's Exhibit A for identification, under seal, will be transmitted as part of the record on appeal to the Appellate Court for examination by that court to determine whether or not this court erred in refusing to receive the exhibit in evidence and in refusing to permit the defendant or his counsel to make an inspection of it. [19]

Mr. Tietz: The defendant rests his case.

The Court: Any rebuttal?

Mr. Robinson: Your Honor, I do not know whether it would be in the nature of rebuttal; in fact I am sure it is not; but I am inclined to ask the court that the Government be permitted to reopen the case for the purpose of presenting evidence in chief which I feel might clear up this matter as to whether or not there was a proper order to report.

Mr. Tietz: We have no objection.

The Court: Do you wish to reopen the case in chief?

Mr. Robinson: Yes, I do, your Honor.

The Court: Is that your motion?

Mr. Robinson: That would be our motion. However, I should accompany the motion by a statement that we should not be prepared to continue with the reopening today.

Mr. Tietz: Perhaps, your Honor, a proffer of

testimony can be made by the Government and I may agree that that would be the testimony, if it were presented, and then we could proceed with our arguments.

The Court: Very well. What is your offer of proof?

Mr. Robinson: Your Honor, I would offer to prove that if a member of the Local Board No. 83, 239 East Olive Avenue, Burbank, California, were called and testified as a witness, that he would testify that the selection of William Joy Batelaan as a subject for induction was participated in [20] by him in his official capacity as a member of the Local Board, and that in all phases of the selection of Mr. Batelaan the Local Board complied with the regulations; that the Order to Report for Induction, SSS Form No. 252 was sent to this registrant pursuant to selection of Mr. Batelaan as a subject for induction by the Board.

I think that would be about the extent of the testimony, your Honor.

Mr. Tietz: I would stipulate that that would be the testimony of the board member if called.

The Court: Will it be stipulated that the board member named will be deemed, for the purposes of this trial, to have been called by the Government upon its case in chief, to have been sworn and to have testified?

Mr. Tietz: Yes, your Honor.

Mr. Robinson: So stipulated, your Honor.

The Court: Pursuant to the stipulation, the Government's case in chief will be reopened and

the testimony thus stipulated will be received. Does the Government now rest?

Mr. Robinson: The Government now rests, your Honor.

The Court: Any further defense?

Mr. Tietz: None.

The Court: Any rebuttal?

Mr. Robinson: No rebuttal, your Honor.

The Court: Both sides rest? [21]

Mr. Robinson: Both sides rest.

The Court: Argument?

Mr. Tietz: The defendant would like to renew all the points made by it as grounds for a judgment of acquittal that were made at the close of the Government's case.

I would like to spend a few minutes arguing further just one of them before going into the points that have been brought out by the defense testimony.

The matter that the defendant would like to argue a bit further is that the state of evidence now does not disclose any delegation of authority by the Board to this individual called "Assistant Coordinator."

(Argument omitted from transcript upon request of counsel.)

The points that the defense now wishes to add to all the other points that were grounds for a judgment of acquittal is that the testimony now shows that at the personal appearance hearing there were denials of due process in the following three respects:



The registrant was denied the opportunity to present new evidence, further evidence, in the form of his brother-in-law.

(Argument omitted.)

The next thing they did at the personal appearance hearing which we submit was a denial of due process, that [22] when he wanted to give them what he said was "new evidence" to support his claim and to support his argument—because he can support his argument as well as his claim by Scriptural references—he was prevented from doing that by the attitude of the Board in immediately asking him other questions. And when the court asked the witness on that, at first there was some confusion apparently in the witness' mind, but his definite answer was that they kept him from presenting new matter, not merely discussing or arguing or pointing out, but prevented him from presenting new matter.

The Court: The motion for a judgment of acquittal is denied. For the reasons stated in the Johnson case, No. 22596, there is a factual basis for the classification.

Mr. Tietz: Might I have a word, your Honor, though I don't like to interrupt your Honor's train of thought? That the cases hold that even though there is a factual basis, the court must make a finding, if the court can make a finding, that there has not been any denial of due process.

The Court: I make that finding impliedly. As

I view it, only procedural irregularities that affect the substantial rights of a registrant are such as might be held to invalidate the classification.

Here, again, this defendant, by his answer to question 5 in the Selective Service form respecting the use of force, provides a specific point, along with other material in the [23] file for the attorney of the Department of Justice to make the recommendation he did to the appeal board and undoubtedly furnished the basis for the appeal board's determination.

The Order to Report for Induction is, as stated, not signed by a member of the Board. It is presumably a valid order. If the defendant had treated it as an invalid order and had refused to report for induction, some interesting question might be presented. But here, he responded to the order, presumably valid, and after responding to the order he refused to submit to induction.

Mr. Tietz: Of course your Honor has in mind the decision that you must report or lose all his grounds for defense in court.

The Court: Yes, I have it in mind. But, if he wanted to stand upon the ground that the order itself was an invalid order, was not validly issued by reason of the want of authority of the individual issuing it, he might be in a stronger position than if he had defied the order entirely.

Mr. Tietz: I see your point.

The Court: That is wholly aside, though, as I view it, Mr. Tietz. There is basis in fact for his classification. There is no showing of any denial of procedural due process, no procedural irregu-

larity of any kind that I find that could have affected the substantial rights of registrant or could have affected his classification in any way. The [24] classification is valid and that constitutes that he is guilty of the charge and must be so found.

Is there any occasion to order a presentence investigation report in this case?

Mr. Tietz: I would not think so, your Honor. The defendant did say to me he would like a few weeks. I told him that I had some implication in these FBI point cases that those who wished to take an appeal would be permitted to be at large on a bond; and I told him that there would not be any reason why this coming Tuesday could not be as good a time as any to have him sentenced.

The Court: Is March 31st at 10:00 o'clock agreeable as the time for sentence?

Mr. Tietz: On my advice, he says, "Yes."

The Court: Very well. Is the defendant at liberty on bail?

Mr. Tietz: Yes, sir.

The Court: His bail will be continued pending sentence. And you may remain at liberty pending sentence, Mr. Batelaan, and you are instructed to return here next Tuesday morning, March 31st next, at 10:00 o'clock for sentence. Do you understand the time?

The Defendant: Yes, sir.

The Court: Very well. [25]

#### Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the

United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings as specified by Defendant's counsel, had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 14th day of July, 1953.

/s/ ALBERT H. BARGION,  
Official Reporter.

[Endorsed]: Filed July 16, 1953.

---

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 15, inclusive, contain the original Indictment, Waiver of Trial by Jury and of Special Findings of Fact; Judgment and Commitment; Notice of Appeal; Designation of Record on Appeal; and two Orders Extending Time to Docket Appeal and a full, true and correct copy of Minutes of the Court for December 8, 1952, March 26 and April 7, 1953, which, together with the original exhibits and reporter's transcript of proceedings on



United States Court of Appeals  
for the Ninth Circuit

No. 13939

WILLIAM JOY BATELAAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY ON  
APPEAL

## I.

Classification of appellant in Class I-A was arbitrary and without basis in fact.

## II.

Appellant was denied due process of law in connection with his personal appearance hearing before the local board, on each of the following grounds:

First: one of the classifying board members demonstrated that he was motivated by a disqualifying prejudice.

Second: appellant was prevented from introducing new evidence.

## III.

The classification action was motivated by and was based on a misconception of the law, namely, that a belief in the use of force disqualified a registrant from being classified in Class I-O.

## IV.

The plaintiff had not met its burden of proof to show that the classification action had been validly made at a legal meeting of the board.

## V.

The plaintiff had not met its burden of proof to show that the Order to Report for Induction had been validly executed.

## VI.

Selective service regulation § 1622.30 (c) (2) is unreasonable and contrary to the intent of Congress in that it, in its application to appellant, unfairly deprived appellant of a III-A deferred classification.

## VII.

The investigative reports of the Federal Bureau of Investigation concerning the conscientious objections of the appellant were required to be placed in the selective service file for access by the appellant and by the selective service appeal board, and the failure to so provide them and to give them access to said reports was a violation of the Act, the Regulations and the due process clause of the Fifth Amendment to the United States Constitution.

## VIII.

The Hearing Officer deprived the appellant of a full and fair hearing and procedural due process of law by failing to give to the registrant a fair, full, and adequate summary of the adverse and unfavor-

able evidence appearing in the FBI report so that the registrant could answer to the unfavorable evidence.

/s/ J. B. TIETZ,  
Attorney for Appellant.

[Endorsed]: Filed September 9, 1953.

---

[Title of Court of Appeals and Cause.]

ADOPTION OF DESIGNATION

Appellant hereby adopts the Designation of Record heretofore filed in the District Court.

/s/ J. B. TIETZ,

[Endorsed]: Filed September 9, 1953.